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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RUDOLPH LOUIS MAPPUS, IV, Plaintiff and Appellant, v. JULIE MENDONCA, as Trustee, etc., Defendant and Respondent.	A149974 (Sonoma County Super. Ct. No. SPR-88021)

Rudolph Louis Mappus, IV and Ariane Schrah are brother and sister, and they are the only beneficiaries of their grandparents' trust. Julie Mendonca is a real estate agent and friend of the grandparents and is the trustee of the trust. The case involves either an impatient heir or a recalcitrant trustee, depending on one's perspective. Mappus filed a petition some nine or ten months after his grandfather died, alleging Mendonca had failed to provide information to the beneficiaries, failed to provide a trust accounting, and failed to make even a partial distribution. Mappus sought an immediate distribution and, if necessary, removal of Mendonca as trustee. Mappus prevailed in having a distribution made some seven months after his petition was filed, but the probate court concluded that Mendonca did not act in bad faith. Consequently, Mappus was not entitled to attorney fees from Mendonca. He now appeals that ruling, alternatively claiming the fees should be covered by the trust (i.e., Schrah should be ordered to pay half the fees).

We find no error in the court's ruling, and because we question the benefit of Mappus's litigation, we conclude Mappus is not entitled to attorney fees from Schrah.

I. BACKGROUND

Frederick and Donnelle Rodack,[1] husband and wife, established the Frederick T. Rodack and Donnelle N. Rodack Trust in 1990 and amended it seven times. Under the seventh amendment in 2007, Mappus was named as one of three successor co-trustees and the sole beneficiary. Schrah was not mentioned, and another grandchild, Robert Plummer, was expressly disinherited. The surviving trustor was, however, authorized to change the successor trustee designation.

Donnelle died in 2010. In May 2014, Frederick moved into a convalescent home in Santa Rosa. In September or October 2014, he asked Mendonca to sell his home in Sebastopol, which she did in March 2015 for $900,000. The sale proceeds went into the trust's investment account.

In August 2014, Frederick replaced Mappus as successor trustee and executor of Frederick's will, naming Mendonca as successor trustee and executor. He appointed Mappus and Schrah to receive equal shares of all trust assets upon Frederick's death.

Frederick died on April 22, 2015, at age 92. The day after his grandfather died, Mappus called Mendonca and told her he was the executor, only to have her inform him that she was now the executor and trustee. Mendonca, who had never been a trustee before, retained the law firm of Anderson Zeigler (Frederick's attorneys) as attorneys for the trust. In mid-May 2015, Kirt Zeigler of that firm sent Mappus and Schrah copies of the seventh amended trust and the change of trustee document, but not the earlier iterations of the trust. During the trust administration, bad blood quickly developed between Mappus and Mendonca. Mappus was dissatisfied from early on with Mendonca's failure to provide him with historical trust documents and an explanation for why he had been replaced as trustee and executor. Mendonca did not have the earlier trust documents, and we know of no right Mappus possessed to have the change of trustee explained to him. Mappus sought the same information from Zeigler, who takes

[1] Because the Rodacks shared a surname, we refer to them by their first names.

the position the beneficiaries were entitled only to the seventh amended trust because it restated the original trust. (§ 16060.5.)

Mendonca, for her part, felt harassed by Mappus. Less than two months after his grandfather died, Mappus asked Mendonca when he could expect an accounting and distribution. In response, Zeigler sent Mappus a letter informing him the trust was worth $1.5 to $1.6 million, and it might take a year from Frederick's death to make a distribution. Mappus was evidently dissatisfied with this timeframe.

Shortly before he died, Frederick told Mendonca that after his passing "he wanted [her] to sell everything as soon as [she] could," rather than risk investment losses. Accordingly, and in consultation with Frederick's financial adviser, Mendonca sold Frederick's stocks and bonds in late June and early July 2015. Unfortunately, due to market conditions, the investments were sold at a loss of nearly $45,000.

The administration of the trust was at least temporarily complicated by the discovery that the Rodacks had adopted an adult son in 1992. That discovery meant no distribution could be made before mid-November 2015 because that was when the adopted son's right to contest the trust would expire. (Prob. Code, § 16061.8.)[2]

In an email on December 22, 2015, Mappus told Mendonca and Zeigler, "It is obvious that you are not capable of your fiduciary responsibilities to the beneficiaries." He demanded an immediate partial distribution of the trust assets. He further demanded "the annual complete financial accounting of the trust due the trust beneficiaries as described in the probate code."

In early January 2016, Zeigler advised Mappus that Mendonca was in the process of having an accounting prepared. On February 8, 2016, Zeigler sent Mappus an email telling him Mendonca was "finishing up the accounting and working with the accountant to get income tax returns prepared [and] filed . . . ."

Nevertheless, on February 10, 2016, Mappus filed a petition to enforce the trust and for distribution, or alternatively, to remove the trustee and appoint Mappus or a

[2] Further undesignated statutory references are to the Probate Code.

professional fiduciary in her place, claiming Mendonca's actions left him with "no choice" but to resort to litigation. (§ 17200, subd. (b)(7).) The petition alleged the distribution had unreasonably been delayed and the beneficiaries had been denied access to information to which they were entitled, including the original trust instrument and first six amendments. Mappus sought to compel Mendonca to comply with his requests for documents, to provide an accounting, and to make a distribution. The verified petition erroneously alleged that Mappus was the "primary beneficiary" and "a 75% beneficiary" of the trust, whereas Mappus and Schrah were actually 50/50 beneficiaries.

The very next day after the petition was filed, Zeigler, on Mendonca's behalf, sent Mappus and Schrah an interim accounting through January 31, 2016 that showed assets of $1.585 million. Zeigler proposed a distribution of $1.4 million, with a reserve of approximately $185,000 for payment of trustee fees, attorney and accountant fees, income taxes and any unexpected contingencies. Mendonca testified that the reserves were set based on Zeigler's advice and took into account litigation anticipated in what appeared to be a looming contest to the trust. The letter indicated Mendonca would make the "distribution as soon as you are willing to accept the accounting," and the distribution would occur "as soon as [the Trustee] is satisfied that there are no further taxes, liabilities or expenses to be incurred in connection with the trust." The enclosed acceptance documents stated: "The undersigned hereby acknowledges receipt of the accounting . . . , and accept[s] the accounting as submitted."

Mappus and Schrah did not sign the receipt. By email to Zeigler on February 25, 2016, Schrah joined Mappus in requesting information and documents concerning trust administration, primarily details regarding brokerage and bank accounts, details of the charges for legal fees, and an explanation for why the stocks were sold at a loss. This is the only time Schrah acted in concert with Mappus during the trust administration or the litigation. Otherwise, she was opposed to involving the court.

On March 23, 2016, Mendonca responded to Mappus's petition, and on March 24, 2016, Mendonca filed a petition of her own under section 17200, subdivision (b)(5) "for instructions regarding distribution of trust; for approval of interim accounting of trustee

and partial distribution of trust." Mendonca stated the interim accounting "shows assets on hand as of March 1, 2016 totaling $1,603,645.14." Mendonca proposed to make a distribution of $1 million ($500,000 to each beneficiary) and "to withhold a reserve of $603,645.14 for the purpose of paying taxes, attorneys' fees, accountants' fees, and any other Trust fees or expenses which may arise after distribution of the Trust assets." Mendonca withheld distribution of the trust assets until she received court approval. She testified that she set the reserves ($185,000 and $603,000) in consultation with Zeigler.

Zeigler's firm took the position that Mappus's claim to be a 75 percent beneficiary constituted a contest to the trust and withheld distribution on that basis. Recognizing that his claim to be a 75 percent beneficiary was false (yet dismissing it as a "typo"), on April 1, 2016, Mappus filed an amended petition correcting that fact and including a claim for bad faith failure to distribute assets, alleging he was therefore entitled to attorney fees to be paid by Mendonca under section 17211, subdivision (b). Mappus's amended petition also included a new claim for breach of trust, alleging imprudence by Mendonca in liquidating the investments at a loss. Mappus contends Mendonca and Zeigler should be denied fees because they "forced" Mappus to resort to litigation by refusing to provide information and documents and an accounting and at least a partial distribution.

Also on April 1, Mappus's attorney wrote to Mendonca's attorney demanding a partial distribution of either the $700,000 earmarked for distribution in the February accounting, or the $500,000 designated in the March accounting, telling him it was unlawful to withhold distribution pending court approval and accusing him of bad faith.

Mappus's attorney took Mendonca's deposition on April 26, 2016. At that time Mendonca produced the documents Mappus had been trying to obtain all along: the original trust and the six prior amendments, as well as the documents Schrah had requested.

On April 28, Mappus's attorney filed a request for dismissal "of certain claims and causes of action," including the cause of action for breach of trust and for information and documents. Afterward, the only issues remaining were the size of the reserve, the claim for bad faith failure to distribute, and consequently, Mappus's right to claim

attorney fees. The notice stated that Mendonca and Anderson Zeigler should be denied fees and costs for defending those claims because they should have provided the information and documents without litigation and should have distributed at least the undisputed $1 million in the trust without seeking court approval.

Both petitions came to trial in September 2016 before Judge René Chouteau, with Mappus challenging the amount of the $603,000 proposed reserve and seeking immediate distribution of the trust assets. Following a bench trial, the court approved the accounting (with a $50 reduction in Zeigler's hourly rate). The court ordered Mendonca to distribute trust funds equally to Mappus and Schrah, holding back just $10,000 in reserve to cover future trust expenses. The court also found, however, that Mendonca did not act in bad faith. The court awarded Mendonca $10,000 in trustee fees (100 hours at $100 per hour) and $44,553 in attorney fees to be paid from the trust before distribution to the beneficiaries, all but $10,883 of which had been incurred after Mappus filed his petition. Mappus was declared the prevailing party and was awarded costs (to be paid by the trust from the $10,000 reserve), but not attorney fees. Mendonca complied with the order and paid half of the assets (less the $10,000 reserve) to each beneficiary, approximately $775,000 to each, by September 16, 2016.

After the distribution, Mappus appealed from the court's order, arguing his legal fees should be paid either by Mendonca or by the trust (i.e., half should be paid by Schrah), and that trustee fees and attorney fees should not have been awarded to Mendonca.[3] Notably, the reserve set by the judge did not allow sufficient funds to cover attorney fees for the trustee in litigation on appeal.

In January 2017, Mendonca petitioned the probate court for additional fees and costs to oppose Mappus's appeal and for an order compelling each beneficiary to return

[3] Mendonca filed a notice of cross-appeal in December 2016 only "to the extent needed to preserve [the] Trustee's rights to recover from Trust beneficiaries sufficient Trust funds previously distributed to them to allow for payment of Trustee's and attorneys' fees incurred in defense of the appeal brought by" Mappus. Mendonca voluntarily dismissed her cross-appeal in September 2017.

$150,000 to the trust to provide a fund from which such fees and costs could be paid. (§ 17200, subd. (b)(5).) Judge Chouteau denied the fee application and motion to compel based on the court's loss of jurisdiction when Mappus filed his notice of appeal from the judgment. Mendonca then appealed from the March 9 order in this court's docket no. A151262.[4] This court dismissed Mendonca's appeal upon motions by Mappus and Schrah in May 2018 because the probate court had no jurisdiction to rule on her motion while the appeal was pending in this docket.

II. DISCUSSION

Mappus claims his petition "forced" a reluctant Mendonca to comply with her duties as trustee and to make a distribution. He portrays her as incompetent, uncooperative, and dilatory, and of taking unfair advantage of Frederick when she sold his home. In reviewing the record, we are left with the opposite impression: that Mappus is an impatient and demanding beneficiary who pursued needless litigation to the detriment of all concerned.

Although Mappus was designated the prevailing party in the trial court, it is questionable whether his intervention by way of petition did anything more surely than to delay the eventual distribution. Indeed, given that Mendonca provided the beneficiaries with an accounting the day after the petition was filed, it is doubtful Mappus's petition was necessary at all. Mendonca in February 2016 proposed to distribute $700,000 to each beneficiary, withholding a reserve of $185,000 for future expenses. Although Mappus felt the reserve was excessive, if Mappus and Schrah had accepted that proposal (with or without a waiver of objections), and avoided litigation, it is likely the remainder of the trust funds would have been distributed in the normal course several months before the trust assets actually were distributed in September 2016. Mendonca testified the trust would have been wrapped up by the one-year anniversary of Frederick's death had Mappus not filed his petition.

[4] Mappus's request for judicial notice of the records in A151262 is granted.

Mappus was antagonistic to Mendonca's administration of the trust from the beginning, perhaps stung by being replaced as trustee, and he unnecessarily escalated the conflict into a courtroom battle. We are confident the court did not abuse its discretion in concluding Mendonca did not act in bad faith, and we have reason to believe she took her duties as trustee seriously and tried her best to carry them out faithfully.[5]

Mappus filed his petition one day *before* Zeigler sent him the interim accounting, when he had already been informed that the accounting was almost finished and when he could not have known of any problem about the size of the reserve or whether Mendonca would distribute the bulk of the trust assets without requiring a waiver of objection. It is also apparent to us that Mappus, throughout the litigation, ran up an unreasonable amount of his own attorney fees (and Mendonca's, i.e., the trust's) in the expectation that sooner or later, someone else would be required to pay them. That was a risky gamble—one aimed at harming the opposing party more than securing a just result for himself. We cannot endorse or reward such tactics.

A. The Court's Failure to Award Attorney Fees to Mappus

1. *The law regarding a beneficiary's entitlement to attorney fees*

Ordinarily a beneficiary petitioning under section 17200 must pay his or her own legal fees even if successful in securing a distribution. (*Smith v. Szeyller* (2019) 31 Cal.App.5th 450, 459–460; *Leader v. Cords* (2010) 182 Cal.App.4th 1588, 1595 (*Leader*); *Estate of Bonaccorsi* (1999) 69 Cal.App.4th 462, 473.) Under section 17211, subdivision (b), however, fees "may" be awarded in the probate court's discretion to beneficiaries who challenge a trustee's accounting if the judge concludes the trustee's defense of his or her accounting was "without reasonable cause and in bad faith." Such

[5] Because Mappus complained that unidentified items owned by Frederick were omitted from a series of photographs of his personal items that Mendonca had sent to Mappus and Schrah, in July 2015, Mendonca prepared a meticulously itemized list of Frederick's personal property in remarkable detail, naming every compact disc and book in his collections, and items as inconsequential as a tape dispenser, stapler, tweezers, and a pair of cuticle scissors. We consider this evidence that Mendonca tried her best to fulfill her obligations as trustee and executor to the letter and in good faith.

an award requires a finding of *both* "bad faith" and action taken "without reasonable cause." (See *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 926–927 (*Uzyel*).) *Leader* held this statute applied to a court's determination that a trustee unreasonably and in bad faith defended against the beneficiaries' petition for distribution of trust assets under section 17200. (*Leader*, at p. 1599.)

In *Uzyel*, *supra*, 188 Cal.App.4th 866, the court analyzed section 17211, subdivision (b). The court held that "reasonable cause" within the meaning of the statute is ordinarily "synonymous with 'probable cause' as used in the malicious prosecution context," but unlike malicious prosecution, reasonable cause under section 17211 is analyzed with reference to the defense against a beneficiary's petition. (*Id*. at pp. 926-927.) " '[B]ad faith' in this context concerns the trustee's subjective state of mind and cannot be inferred from the absence of probable cause alone." (*Id.* at p. 927, fn. 47.)

"Reasonable cause" to defend, e.g., to oppose a challenge to an accounting or a request for a distribution, "requires an objectively reasonable belief, based on the facts then known to the trustee, either that the claims [raised in the contest] are legally or factually unfounded or that the petitioner is not entitled to the requested remedies. Conversely, there would be no reasonable cause to oppose a contest of an account only if all reasonable attorneys would have agreed that the opposition was totally without merit, or, in other words, no reasonable attorney would have believed that the opposition had any merit." (*Uzyel*, *supra,* 188 Cal.App.4th at p. 927.) On appeal, the probate court's finding of reasonable cause is reviewed de novo. (*Ibid*.)

Bad faith or "[m]alice does not require that the defendants harbor actual ill will toward the plaintiff in the malicious prosecution case, and liability attaches to attitudes that range 'from open hostility to indifference.' " (*Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1113–1114.) "Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 218.)

As we read Judge Chouteau's decision, he made no ruling on the "without reasonable cause" prong, and instead made a dispositive finding of no bad faith on Mendonca's part. Bad faith is inherently a factual finding and triggers a high degree of deference by this court. Accordingly, we review that finding for substantial evidence only. (*Powell v. Tagami* (2018) 26 Cal.App.5th 219, 234.) Moreover, because of the permissive language of section 17211, attorney fees need not be awarded, even if there was a lack of reasonable cause and bad faith. (Cf. *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1328 [abuse of discretion standard in reviewing fee award under "may award" language of Code Civ. Proc., § 1021.5].) Therefore, we will apply the substantial evidence standard in reviewing the court's finding of no bad faith by Mendonca and the abuse of discretion standard in determining whether the court erred in denying discretionary attorney fees to Mappus. We consider the "bad faith" prong of the statute first, and finding no error, do not consider whether Mendonca acted without reasonable cause.

2. *Mappus did not show Mendonca acted in bad faith*

Mappus suggests that Mendonca's bad faith is demonstrated by the fact that she failed to distribute "a single penny" of the trust assets while his petitions were pending. More specifically, Mappus accuses Mendonca of violating section 16004.5 by making the initial proposed distribution ($1.4 million) contingent on the beneficiaries' acceptance of the interim accounting. True, a trustee cannot require a release or waiver as a condition for a distribution. (§ 16004.5, subd. (a); accord *Bellows v. Bellows* (2011) 196 Cal.App.4th 505, 510–511 (*Bellows*).) A beneficiary may also recover attorney fees if the trustee opposes a petition under section 17200 without distributing undisputed amounts due the beneficiary under an accounting. (*Leader*, *supra*, 182 Cal.App.4th at pp. 1598–1599.) The failure to distribute the undisputed amounts was at worst based on a misunderstanding of the law by Mendonca, no doubt in reliance on her attorney's advice. (See *Connelly v. Bornstein* (2019) 33 Cal.App.5th 783, 797 [party may rely on advice of counsel in judging tenability of legal claim].)

But Mendonca argues a trustee may solicit a beneficiary's voluntary approval of an accounting (§ 16004.5, subd. (b)(2)), so long is there is no threat to withhold distribution of assets in the absence of such approval. Mendonca contends Zeigler's letter accompanying the interim accounting did not make distribution contingent on the beneficiaries' acceptance of the accounting or waiver of any right they might have to object. Mendonca and Zeigler contend the distribution would have been made, even if Mappus and Schrah refused to accept the accounting or filed objections to the amount of the reserve, except for Mappus's pending petition and its claim that Mappus was a 75 percent beneficiary. The trustee believed based on counsel's advice that she had a right to request court approval before distribution. (See § 17200, subd. (b)(5).) The trial judge agreed with Mappus's interpretation of the letter as a refusal to distribute contrary to law, but that shows at most legal misjudgment by Zeigler, not bad faith on Mendonca's part. The record as a whole provides no reason to attribute bad faith to Mendonca, even if her attorney's letter may be read as conditioning distribution on a waiver of objections to the interim account, and even if it may be said that the attorney's action was without reasonable cause.

Mappus puts forth the following acts by Mendonca as showing her bad faith.

a. *Failure to produce all six previous iterations of the trust to Mappus*

Mendonca and her attorney contend Mappus was not entitled to copies of all of the iterations of the trust documents. Because the seventh amendment to the trust restated the pre-existing trust, they claim they were required to produce to Mappus only the seventh amended trust. They contend that Mappus had no right under the law to all trust amendments. The operative seventh amendment to the trust was "amended and restated in full." A trustee is required to inform a beneficiary, upon request, of the "terms of the trust." (§ 16060.7.) Section 16060.5 provides that if a trust has been completely restated, the phrase " 'terms of the trust' does not include trust instruments or amendments which are superseded by the last restatement before the settlor's death . . . ." Thus, Mappus was provided with all the documents to which he was entitled less than a month after

Frederick's death. Besides, Mendonca did not have the earlier versions of the trust and could not have provided them.

Moreover, even after receiving all the documents he had requested at Mendonca's deposition, Mappus has not demonstrated how those documents assisted the beneficiaries in connection with any issue in the trial, the appeal, or otherwise. Mappus may have felt vindicated by his acquisition of documents he had long sought from Mendonca, but he has not shown how those documents benefited either himself or Schrah in any tangible way or made any difference to the resolution of how much the beneficiaries would be paid or when they would be paid.

b. *Failure to produce timely accounting*

Zeigler sent Mappus and Schrah an interim accounting on February 11, 2016. This was within 60 days after Mappus made his most recent demand for an accounting on December 22, 2015, but Mappus alleged earlier demands were ignored. (See § 17200, subd. (b)(7)(C).) Assuming Mappus was entitled to an accounting at some point earlier in time (see § 16062, subd. (a) [beneficiary entitled to accounting "at least annually"]), he cannot show bad faith when an accounting was provided to him less than ten months after Frederick's death, one day after he filed his petition, within 60 days of his demand, and in accordance with the timeframe the trustee had set forth in June 2015. Yet, he failed to dismiss his petition in which he claimed to be a 75 percent beneficiary and instead filed an amended petition alleging greater wrongdoing by Mendonca.

c. *Excessive establishment of and increase in reserves*

The initial accounting presented to Mappus and Schrah in February 2016 included a reserve of $185,000, which Mappus claims was excessive. He argues that, in light of known expenses, a $20,000 reserve would have been sufficient. His calculation includes nothing for litigation expenses, even though he initiated litigation. After Mendonca and Zeigler decided they needed to file a petition to approve the accounting, they raised the reserve to $603,000 in the March 2016 accounting. Mappus accuses them of grossly inflating it in retaliation for his challenge to the accounting. Given the toxic relationship between Mappus and Mendonca, increasing the reserve for future litigation expenses, at

least on a theoretical level, was a reasonable reaction. Whether Mendonca and Zeigler increased the amount too much was a question of fact for the trial judge, who implicitly found the reserve was excessive, but explicitly found Mendonca did not act in bad faith. We see no abuse of discretion.

d. *Failure to distribute undisputed trust assets not covered by reserves*

Finally, Mappus argues that Mendonca's failure to distribute the undisputed assets of $1 million identified in the March 2016 accounting as not subject to the $603,000 reserve was proof of an unreasonable defense made in bad faith. The trial court ultimately reduced the reserve to $10,000 post-trial (while allowing payment of attorney fees for defense of Mendonca's objection to Mappus's petition and for prosecuting her own petition). While the judge determined Mendonca's large reserve was not justified and that she should have distributed the $1 million undisputed amount even while the litigation was pending, the reserve he set has now proven to be inadequate to allow Mendonca to defend this appeal. Mendonca unsuccessfully petitioned to reinstate a larger reserve to cover those fees in the postjudgment order appealed in A151262.

Mappus insists we must look not only at Mendonca's own conduct, but also Zeigler's conduct, to determine the bad faith issue. He argues that Zeigler's lack of reasonable cause, and his alleged bad faith, would be attributable to Mendonca under the doctrine that an attorney's knowledge is imputed to his or her client. (*Laukkare v. Abramson* (1935) 9 Cal.App.2d 447, 449.) That rule applies to an attorney's knowledge of facts and generally to an attorney's negligence. (See Civ. Code, § 2332; *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 475; *Lazzarevich v. Lazzarevich* (1952) 39 Cal.2d 48, 50.) Whether an attorney's bad faith may be attributed to the client is a closer question. (Cf. *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 898–900; *Rosenthal v. Garner* (1983) 142 Cal.App.3d 891, 895; *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 391; see *Allen v. Nissley* (Conn. 1981) 440 A.2d 231, 234 ["When an attorney acts in bad faith or intentionally neglects the client's business, the general rule does not apply."]; *Sayer v. Lee* (S.D. 1918) 166 N.W. 635, 636.)

Mappus argues that Zeigler acted in bad faith, as well as without reasonable cause, because his firm represented the plaintiff and appellant in *Bellows*, *supra*, 196 Cal.App.4th 505, and therefore he must have known it was unlawful for Mendonca to withhold distributing to the beneficiaries at least the trust assets not in dispute (at least $1 million). That decision, if in fact Zeigler made it,[6] does not inevitably signal a lack of good faith. There is no evidence, for instance, that Zeigler himself was involved in the *Bellows* litigation. And though Mappus's counsel wrote a letter to Zeigler on April 1, 2016, accusing him of bad faith for failing to make a distribution, Zeigler had a rational reason for concluding Mendonca could await court approval. (See § 16004.5, subd. (b)(4) [a trustee may "[w]ithhold any portion of an otherwise required distribution that is reasonably in dispute"].) At least until Mappus amended his petition on April 1, 2016, there was still a dispute about whether he was a 75 percent beneficiary or a 50 percent beneficiary. Though Zeigler's continued advice to withhold distribution was more questionable after April 1, Mendonca retained her right to rely on her attorney's advice. (*Connelly v. Bornstein*, *supra*, 33 Cal.App.5th at p. 797.) There was substantial evidence supporting the trial court's finding of no bad faith by Mendonca, and its implicit finding of no bad faith by Zeigler. We see no evidence beyond the opposition to Mappus's petition and filing and maintenance of Mendonca's own petition to support a finding of bad faith on Zeigler's part—which is not enough—nor any reason to impute such a state of mind to Mendonca.

B. Schrah Need Not Pay Half of Mappus's Attorney Fees

Mappus argues, alternatively, that the trust should pay his legal fees, meaning Schrah should pay half. Mappus's argument was forfeited by his failure to raise it in the

[6] Zeigler's firm argues that Zeigler's letter did not intend to convey that Mendonca would not distribute the $1.4 million unless the beneficiaries waived their rights to object to other aspects of the accounting, such as the reserve. The contingent nature of the offer to pay was crystal clear in *Bellows*, and not so clear here. (See *Bellows*, *supra*, 196 Cal.App.4th at p. 508.)

trial court. (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997; *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1519.)

Even on the merits, however, we reject Mappus's contention. Mappus's institution of a petition challenging Mendonca's conduct as trustee accomplished little for the trust beneficiaries and cost a lot. Mappus cites cases holding that a beneficiary who secures a benefit, not just for himself or herself, but for the other beneficiaries, may be awarded his or her attorney fees to be charged against the compensation otherwise due the trustee. (§ 17211, subd. (b); see *Smith v. Szeyller, supra,* 31 Cal.App.5th at pp. 453, 459–463; *Rudnick v. Rudnick* (2009) 179 Cal.App.4th 1328, 1334, fn. 2; see also *Eggert v. Pacific States Savings & Loan Co.* (1942) 53 Cal.App.2d 554, 558–559 (*Eggert*).) Schrah does not dispute this rule, but notes it is equally clear, where various beneficiaries of a trust are hostile litigants, each employing separate counsel, a beneficiary who benefits no one but himself or herself in prosecuting a petition is not entitled to attorney fees. (*Estate of Marre* (1941) 18 Cal.2d 191, 192.)

This case falls into the last category. It is certainly subject to dispute whether Mappus actually achieved a valuable result for the trust beneficiaries, even though he was designated the prevailing party at trial. His litigation appears to have been driven more by emotion than by necessity. A beneficiary seeking to have his or her attorney fees paid by the trust must conduct the litigation in good faith and reasonably. (*Eggert, supra,* 53 Cal.App.2d at p. 558.) We conclude Mappus's petition did not result in Schrah's receiving an earlier or larger distribution, and though it did get Schrah some documents she wanted, those almost certainly would have been produced by Mendonca in due course without litigation.

Schrah did not support Mappus's petition, evidenced not only by hiring her own attorney, but also by filing a declaration describing her brother as "disgruntled and delusional," opining that his "belief that there has been a delay" and his other allegations were "not founded in fact nor reality." "Throughout this process," she declared, her brother had "acted hastily and irrationally and only caused unnecessary delay and expenditure of fees by filing unnecessary motions." By contrast, Schrah characterized

Mendonca as "reasonable, transparent, and responsive," and Schrah indicated she had no issues with the manner in which Mendonca was administering the trust. The hostility between the respective positions of Schrah and her brother in the proceedings below is palpable.

Furthermore, and contrary to Mappus's argument on appeal, his prosecution of the petition against the trustee did not secure a substantial benefit for both himself and his sister. It is true that Mappus did succeed in securing a reduction of the reserve and compelling a distribution of the balance of the trust fund, resulting in both siblings receiving approximately $775,000 in mid-September 2016. It is also true that the trustee produced certain documents at her deposition that Schrah had previously requested. None of this warrants a fee award for Mappus, however, because all of these events would have transpired without court involvement. Distributions would have been made regardless (including distribution of any amount initially held in reserve), and probably the beneficiaries would have received the same amount or more several months earlier if Mappus had not insisted on filing his petitions and running up attorney fees on both sides.

To the extent Mappus was in a rush to receive his distribution and certain documents, Schrah urges that his petition only delayed, rather than expedited, those events. Mendonca testified that prior to Mappus's lawsuit, the trust administration was on track to be entirely wrapped up by April 22, 2016, within one year of Frederick's death, just as Mappus had been told in June 2015. In fact, and in light of the litigation, the distribution was ordered to be made by September 16, 2016—nearly five months after the entire trust administration would have been complete, but for Mappus's petition. Schrah should not have to bear the cost of her brother's impatience and litigiousness; she is not required to pay for half of her brother's attorney fees.

C. Mendonca Was Properly Awarded Trustee's and Attorney's Fees

Mappus contends the court erred in awarding trustee's fees of $10,000 to Mendonca because Mendonca was "merely a spectator" and delegated all decisionmaking to Zeigler. Mappus claims Zeigler was unsuccessful in defending against his amended petition, and therefore no attorney fees should be paid by the trust because the litigation

stance taken by Zeigler resulted in no benefit to the trust. A trustee may recover attorney fees incurred to assist the trust so long as they are reasonable in amount and appropriate to the circumstances. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 268–269.) The court's determinations regarding the award of a trustee's fee and attorney fees are reviewed for abuse of discretion. (*Finkbeiner v. Gavid* (2006) 136 Cal.App.4th 1417, 1422 [trustee's fees]; *Donahue*, at p. 269 [trust's attorney fees].) We do not take as dim a view of Zeigler's efforts as does Mappus. We see no abuse of discretion on the part of Judge Chouteau.

III. DISPOSITION

The judgment is affirmed. Mendonca shall recover her costs on appeal.

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STREETER, J.

We concur:

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POLLAK, P.J.

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BROWN, J.